

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DAVID PARKER

PLAINTIFF

vs.

CIVIL ACTION NO. 3:20-cv-00300-HTW-LRA

JEROME HENRY;
EMPLOYERS INSURANCE COMPANY OF WAUSAU;
LIBERTY MUTUAL GROUP d/b/a
LIBERTY MUTUAL INSURANCE AND
HELMSMAN MANAGEMENT SERVICES;
JOHN DOE PERSON(S) 1-5 AND JOHN DOE ENTITY(IES) 1-5

DEFENDANTS

**AGREED ORDER DISMISSING PLAINTIFF'S CLAIM FOR
ALLEGED BAD FAITH WITHOUT PREJUDICE AND
REMANDING THE REMAINING, UNDERLYING CLAIMS**

THIS CAUSE came on for hearing on the parties' *ore tenus* motion to dismiss, without prejudice, the Plaintiff's cause of action for alleged bad faith (Count V in the Amended Complaint) and to remand the remaining, underlying claims relating to the subject vehicular accident, and this Court, having considered the matter and being fully advised in the premises, finds and orders as follows:

1. On April 29, 2020, Defendants Employers Insurance Company of Wausau ("Employers") and Liberty Mutual Group d/b/a Liberty Mutual Insurance and Helmsman Management Services ("Liberty") (hereinafter jointly and collectively referred to as the "Insurer Defendants") removed this action from the Circuit Court of Leake County, Mississippi, to this Court on the grounds that Plaintiff's claims involving the alleged negligent operation of a motor vehicle were fraudulently, egregiously, or otherwise improperly misjoined with the causes of action regarding claim handling and insurance issues, including the claims for alleged bad faith and punitive/extra-contractual damages. Doc. 1, Insurer Defendants' Notice of Removal.

2. In the Amended Complaint, Plaintiff alleges that he sustained personal injuries resulting from a car wreck with Jerome Henry ("Henry"). Doc. 1-1, at ¶8-10. Plaintiff asserts

claims against Henry for negligence (Count I), reckless driving under Miss. Code Ann. §63-3-1201 (Count II), and careless driving under Miss. Code Ann. §63-3-1213 (Count III) (hereinafter collectively referred to as the “negligence claims”). Doc. 1-1, at ¶16-21.

3. Plaintiff also seeks to recover uninsured/underinsured (“UM/UIM”) motorist benefits from Employers, his employer’s UM/UIM carrier, relating to the alleged personal injuries from the car wreck (Count IV) (referred to hereinafter as the “underlying car wreck UM/UIM claim”). Doc. 1-1, at ¶23.

4. Plaintiff further contends that the Insurer Defendants committed bad faith in the handling of his claim and seeks punitive damages (Count V). Doc. 1-1, at ¶24-29. Under Count V, Plaintiff alleges, among other things, that Defendants “breached [their] duty of fair dealing and good faith owed to Plaintiff by refusing to pay his legitimate claim for injuries which resulted from the . . . motor vehicle accident.” Doc. 1-1, at ¶27.

5. The underlying car wreck claims (i.e., the negligence claims and the underlying car wreck UM/UIM claim) do not involve any insurance or claim handling issues. Instead, the negligence claims and the underlying car wreck UM/UIM claim equate to a traditional car wreck case.

6. Plaintiff agrees to voluntarily dismiss, without prejudice, the cause of action for alleged bad faith (Count V) against the Insurer Defendants, and the Insurer Defendants agree to the voluntary remand of the remaining, underlying claims (Counts I, II, III, and IV) to the Circuit Court of Leake County, Mississippi.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Plaintiff’s cause of action for alleged bad faith against the Insurer Defendants (Count V) be, and hereby is, dismissed without prejudice; and

IT IS FURTHER ORDERED that remaining, underlying car wreck claims, consisting of the negligence claims against Jerome Henry (Counts I, II, and III) and the underlying car wreck UM/UIM claim against the Insurer Defendants (Count IV), be, and hereby are, remanded to the Circuit Court of Leake County, Mississippi.

SO ORDERED AND ADJUDGED this the 6th day of July, 2020.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE

Agreed By:

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